

## **MINUTES**

### **MONTANA HOUSE OF REPRESENTATIVES 58th LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON JUDICIARY**

**Call to Order:** By **CHAIRMAN JIM SHOCKLEY**, on March 10, 2003 at 8 A.M., in Room 137 Capitol.

#### **ROLL CALL**

**Members Present:**

Rep. Jim Shockley, Chairman (R)  
Rep. Paul Clark, Vice Chairman (D)  
Rep. Jeff Laszloffy, Vice Chairman (R)  
Rep. George Everett (R)  
Rep. Tom Facey (D)  
Rep. Steven Gallus (D)  
Rep. Gail Gutsche (D)  
Rep. Christopher Harris (D)  
Rep. Michael Lange (R)  
Rep. Bruce Malcolm (R)  
Rep. Brad Newman (D)  
Rep. Mark Noennig (R)  
Rep. John Parker (D)  
Rep. Holly Raser (D)  
Rep. Diane Rice (R)  
Rep. Scott Sales (R)  
Rep. Ron Stoker (R)  
Rep. Bill Thomas (R)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** John MacMaster, Legislative Branch  
Lisa Swanson, Committee Secretary

**Please Note.** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing & Date Posted: SB 75, 2/28/2003; SB 57, 2/28/2003;  
SB 64, 2/28/2003  
Executive Action: SB 68; SB 75; SB 64

**HEARING ON SB 75****Sponsor:** SENATOR COREY STAPLETON, SD 10, Billings**Opening Statement by Sponsor:**

SENATOR STAPLETON opened on SB 75 explaining that this bill provides the Montana National Guard with a civil relief act from mortgages and other civil relief obligations while they are on active duty. Guards are not currently afforded this protection when on State or Federally funded, in State, active duty.

**EXHIBIT** (juh50a01)***{Tape: 1; Side: A; Approx. Time Counter: 0 - 20}*****Proponents' Testimony:**

**General Randy Mosely, Deputy Director of Department of Military Affairs,** supported SB 75. He stated that since 911, the war against terrorism has greatly increased the number of men and women deployed to active duty. Title 10, the Federal Soldiers and Sailors Relief Act, covers overseas duty. He explained that the National Guard, a state organization, is unique in that guard members can be called to both state and federal active duty not under Title 10 but under Title 32. He explained that guards may be deployed under Title 32, not overseas, yet are away from their homes for extended periods of time. This bill would provide the same level of protections for State active duty as found in the federal statute.

***{Tape: 1; Side: A; Approx. Time Counter: 21 - 62}***

**Roger Hagen, Montana National Guard,** supported SB 75. He stressed that this bill is important for the Montana National Guard and would cover State active duty such as forest fires, floods, or snow removal. It would also cover federal 32 status which was not covered in the past. After 911, the Guards worked active duty at the airports under Title 32 and, at that time, did not have any protection under the Soldiers and Sailors Relief Act. He stated that although Congress has since addressed that particular contingency, this bill would cover a other Title 32 types of deployment.

***{Tape: 1; Side: A; Approx. Time Counter: 63 - 89}*****Opponents' Testimony:** None

**Informational Testimony:** None

**Questions from Committee Members and Responses:**

**REP. NOENNIG** asked whether there are instances where this stay action has been available to date. **General Mosley** responded that there have been cases where it has occurred such as training outside of Montana for an extended period of time. **Colonel James P. Moran, Attorney for the Montana National Guard**, responded that this is a timely bill at a time when guard members are being called away from home for extended periods of time. It is basically a civil time out.

***{Tape: 1; Side: A; Approx. Time Counter: 83 - 159}***

**REP. RICE** asked whether this bill would be for an indefinite period of time. **Colonel Moran** responded that it would only be effective while the person is on active duty for over 30 days. He explained that this bill would go beyond housing giving courts the ability to stay contracts until the guard is home.

***{Tape: 1; Side: A; Approx. Time Counter: 160 - 188}***

**Closing by Sponsor:**

**SENATOR STAPLETON** closed on SB 75 stating this bill would allow the guard to focus on their job at hand while on active duty. It would relieve them of their financial obligations while on an extended active duty.

***{Tape: 1; Side: A; Approx. Time Counter: 189 - 270}***

**HEARING ON SB 57**

**Sponsor:** **SENATOR BOB KEENAN, SD 38, Flathead and Lake County**

**Opening Statement by Sponsor:**

**SENATOR KEENAN** opened on SB 57 stating this bill would adopt a definition to mental disease or defect in response to the Montana Supreme Court decision in State v. Wooster. The Court in Wooster adopted New York's definition which is a civil definition which makes all of New York's case law applicable when the term is used in Montana court proceedings. He stated that many skilled people have worked on this definition over the past 18 months. He

explained the importance of getting this definition into the Montana Code.

**EXHIBIT (juh50a02)**

***{Tape: 1; Side: A; Approx. Time Counter: 270 - 317}***

**Proponents' Testimony:**

**Dan Anderson, Department of Public Health and Human Services (DPHHS)**, supported SB 57. He is the Administrator of Addictive Services. He explained the importance of a definition of mental disease or defect that is balanced and not so broad that people are not held accountable.

***{Tape: 1; Side: A; Approx. Time Counter: 318 - 370}***

**Donald Haar, Physician/Psychiatrist, Billings**, supported SB 57. He represented the Montana Medical Association. This definition gives the court the latitude to make the final decision.

**Anita Roessman, Attorney for Montana Advocacy Program**, supported SB 57. She stated that this bill is important and has worked through many issues resulting in a well drafted bill. She stated that in Wooster, a 1999 case, the Court adopted the New York forensic definition. The issue in Wooster was whether the defendant should get out of Warm Springs. The defendant argued he was no longer mentally ill and therefore should get out. The Court found that he should not get out because he still suffered from a mental disease or defect.

***{Tape: 1; Side: A; Approx. Time Counter: 371 - 473}***

**Janie McCullum, Deaconess Billings Clinic (DBC)**, supported SB 57, stating that DBC has one of the three private psychiatric units in Montana.

**Bonnie Adie, Mental Health Ombudsman**, supported SB 57. She stated we need to differentiate between those people needing treatment and those needing punishment or behavioral modification.

***{Tape: 1; Side: A; Approx. Time Counter: 474 - 497}***

**Al Davis, Montana Mental Health Association**, supported SB 57.

**Opponents' Testimony:** None

**Informational Testimony:**

**REP. NEWMAN, HD 38, Butte**, stated that he is the State's attorney in the Wooster case. He stated that Donald Wooster was a Butte defendant in the late 1970's. He was acquitted based on mental disease or defect. He was diagnosed as anti-social, an untreated sex offender and chemically dependent. The DSMIV manual did not cover him but the Court stated that his combination of conditions amounted to a mental disease or defect. He stated that this is why Montana needs an affirmative defense for mental disease or defect because it is the Legislature's, not the Courts, job to define mental disease or defect.

**{Tape: 1; Side: A; Approx. Time Counter: 497 - 512}**

**{Tape: 1; Side: B; Approx. Time Counter: 1 - 20}**

**Questions from Committee Members and Responses:**

**REP. CLARK** asked about the term "substantial" and how the court would define it. **Mr. Anderson** responded that the level of disability or mental disorder must be significant. **Dr. Haar** stated that you do not want the statute so broad as to leave loop holes, yet you do not want it so narrow that you convict the person who is seriously mentally ill.

**REP. NEWMAN** commented that you would look at whether a defendant can effectively assist in their own defense and whether they acted purposefully and knowingly at the time of the offense. He asked whether it would be wise to exclude developmental disability from the definition of mental disease or defect. **Mr. Connor** responded that is a good question and it must be looked at from the perspective of prosecuting a defendant whose mental state is at issue. He stated that the threshold determination of whether a person can proceed is a competency determination. If it is determined that a defendant is competent to proceed, you look at whether the defendant had the capacity to act with purpose or knowledge. The jury would be instructed on the definition of serious mental disease or defect the defendant raised it as a defense.

**{Tape: 1; Side: B; Approx. Time Counter: 21 - 209}**

**REP. NEWMAN** stated that the definition of mental illness in SB 57 conflicts with the definition in SB 35. **REP. NOENNIG** asked what was wrong with the Wooster definition. **Ms. Roessman** responded that the State hospital and two psychiatrists felt the Wooster definition was overly broad and would bring forensic commitments to Warm Springs that did not belong there.

***{Tape: 1; Side: B; Approx. Time Counter: 210 - 267}***

**REP. FACEY** asked who had the burden of proof in proving the defendant had a mental disease or defect. **Mr. Connor** responded that the prosecution's burden is to prove each element of the crime beyond a reasonable doubt but the defense must bring forth the issue of mental disease or defect. The three options on the verdict form would be: not guilty, guilty, or not guilty by reason of mental disease or defect.

**Ms. Roessman** stated that if you do not exclude the definition of developmental disability from the definition of mental disease or defect, you may inappropriately narrow the definition.

**REP. THOMAS** asked about judgment and whether a person can have very poor judgment yet recognize reality. **Mr. Haar** responded that is likely the case.

***{Tape: 1; Side: B; Approx. Time Counter: 268 - 512}***

**REP. NEWMAN** stated that the legal issues, such as issues regarding a person's care, in a civil commitment are different then the issues in a criminal context. In a criminal context, the questions are whether the defendant's mental disability affect his ability to assist in his own defense or whether he acted purposely or knowingly when committing the crime.

**Closing by Sponsor:**

**SENATOR KEENAN** closed on SB 57. He stated we do not want the New York definition in the Civil Code and that this bill would provide a better definition for Montana. He urged a do pass.

**HEARING ON SB 64**

**Sponsor:** **SENATOR BOB KEENAN, SD 38, Big Fork**

**Opening Statement by Sponsor:**

**SENATOR KEENAN** opened on SB 64. He explained that this bill was also requested by DPHHS. He explained that involuntary commitments begin with a petition filed by the county attorney. Under current law, certain individuals, usually the respondent and counsel, are notified. This bill would expand notification to DPHHS and the treatment facility.

***{Tape: 2; Side: A; Approx. Time Counter: 272 - 323}***

**Proponents' Testimony:****Dan Anderson, Department of Public Health and Human Services**

(DPHHS), supported SB 64. He stated that the DPHHS requested this bill. It would ensure that two additional facilities, DPHHS and the treatment facility, are notified when a civil commitment petition is filed. This bill would allow DPHHS, for the first time, to gather data on the commitments. He stated this bill deals with the civil process where a person needs to be committed because they are unable to care for themselves and the mental illness has caused them to be a danger to themselves or others.

*{Tape: 2; Side: A; Approx. Time Counter: 324 - 373}*

**Anita Roessman, Montana Advocacy Program (MAP)**, supported SB 64. She stated the two goals of the bill are to get more data on civil commitments and to divert people into community services where feasible.

**Al Davis, Montana Mental Health Association**, supported SB 64.

**Janie McCall, Billings Deaconess**, supported SB 64.

*{Tape: 2; Side: A; Approx. Time Counter: 374 - 396}*

**Opponents' Testimony:** None

**Informational Testimony:** None

**Questions from Committee Members and Responses:** None

**Closing by Sponsor:**

**SENATOR KEENAN** closed on SB 64.

*{Tape: 2; Side: A; Approx. Time Counter: 397 - 410}*

**HEARING ON SB 68**

**Sponsor:** SENATOR BRENT CROMLEY, SD 9, Billings

**Opening Statement by Sponsor:**

**SENATOR CROMLEY** opened on SB 68. He explained that this bill corrects a constitutional error in the Montana Code. In June, 2002, the U.S. Supreme Court ruled in Ring v. Arizona that a defendant facing the death penalty is entitled to a jury trial of

the facts upon which a death sentence would be based. Aggravating circumstances in Montana include whether the crime was committed during a sexual assault, involved a police officer, occurred during incarceration, or involved torture. Ring v. Arizona held the jury must determine whether aggravating factors existed as well as the underlying guilt of the crime charged. It held the statutes in Arizona were unconstitutional and applied to Colorado, Idaho, Nebraska and Montana. Montana's current law allows judges to determine whether aggravating circumstances existed which Ring determined is unconstitutional. This bill would require the jury, and not the judge, to decide whether aggravating circumstances existed.

***{Tape: 2; Side: A; Approx. Time Counter: 411 - 487}***

**Proponents' Testimony:**

**John Connor, Chief Legal Counsel, Department Of Justice (DOJ)**, supported SB 68. He explained that 46-1-401 is the sentencing enhancement statute. This bill would require the jury, not the judge, to decide whether aggravating circumstances existed. The court would decide the actual sentence based off the jury determination.

***{Tape: 2; Side: A; Approx. Time Counter: 488 - 512}***

**Opponents' Testimony:** None

**Informational Testimony:** None

**Questions from Committee Members and Responses:**

**REP. HARRIS** asked how Ring affects death row inmates in Montana. **Mr. Connor** responded that issued is still being litigated. He explained that Turner v. State of Montana was argued last year before the Montana Supreme Court on a post conviction basis. Before the case was decided, the Court ordered a rehearing on the conviction upon which the death penalty was based. This rehearing occurred in January, 2003, and no decision has yet been reached. If the Court holds that the essence of Ring is retroactive, it would affect all people on death row who were convicted at trial but may not affect guilty pleas. He explained if Ring is retroactive, all of the convicted death row inmates would need to be re-sentenced. Mr. Connor explained that there is also a case before the Ninth Circuit arguing that Ring should be retroactive.

***{Tape: 2; Side: B; Approx. Time Counter: 1 - 56}***



Closing by Sponsor:

SENATOR KEENAN closed on SB 68.

EXECUTIVE ACTION ON SB 68

Motion/Vote: REP. NEWMAN moved that SB BE CONCURRED IN. Motion that SB 68 BE CONCURRED IN carried 15-3 with REPS. FACEY, GALLUS, and GUTSCHE voting no, by voice vote. Carried by REP. NEWMAN.

*{Tape: 2; Side: B; Approx. Time Counter: 57 - 115}*

EXECUTIVE ACTION ON SB 75

Motion: REP. LANGE moved that SB 75 BE CONCURRED IN.

Discussion:

The Committee discussed this bill from a landlord's viewpoint and how they would be affected. The landlord would suffer financially if they had no income coming in for nonpayment of rent. The renter who is in the National Guard and is granted a stay on his financial obligation of rent or a mortgage, would still have to pay once active duty is over. The bill only applies to civil actions.

Motion/Vote: REP. CLARK moved that SB 75 BE AMENDED. Motion carried 18-0, by voice vote.

Motion/Vote: REP. FACEY moved that SB 75 BE CONCURRED IN AS AMENDED. Motion carried 18-0, by voice vote.

EXECUTIVE ACTION ON SB 64

Motion/Vote: REP. FACEY moved that SB 64 BE CONCURRED IN. Motion carried 18-0, by voice vote.

*{Tape: 2; Side: B; Approx. Time Counter: 116 - 229}*

**ADJOURNMENT**

Adjournment: 12 P.M.

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REP. JIM SHOCKLEY, Chairman

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LISA SWANSON, Secretary

JS/LS

**EXHIBIT** (juh50aad)